

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury?
3. If so, is claimant's present need for medical treatment related to the October 7, 2002 accident or a later incident at home?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes that the preliminary hearing Order should be affirmed.

Respondent operates a car dealership in Winfield, Kansas. On the alleged date of accident, respondent employed claimant as a mechanic. The greater weight of the evidence establishes that claimant injured his right foot and ankle on October 7, 2002, when he jumped from an alignment rack and twisted his foot. Shortly after the incident, claimant told Richard Hankins, respondent's service consultant, about the incident when Mr. Hankins questioned claimant about limping. That same day, claimant telephoned his personal physician's office requesting an appointment to obtain pain medication. Although somewhat cryptic, the medical notes pertaining to that conversation read:

10-7-02 calls stating having R foot pain. Jumped off rack at work today & needed appt. for pain med. Advised to report to work manager – BD/kh

Moreover, claimant also testified that on the day of the accident he also told Steve Tackett, respondent's service manager trainee, about the incident. When claimant finally consulted a doctor December 13, 2002, according to the medical notes claimant advised the doctor that he had twisted his ankle at work jumping from an alignment rack.

The Judge found claimant's testimony credible and granted the request for benefits. Considering all of the evidence presented to date, including the various medical records and the testimonies from respondent's witnesses, the Board also finds claimant's testimony credible. Accordingly, the Board finds and concludes that claimant injured his right foot and ankle on October 7, 2002, while working for respondent. The Board also concludes that the accident arose out of and in the course of employment.

The greater weight of the evidence further establishes that claimant provided respondent with timely notice of the accident. Mr. Hankins acknowledges that claimant mentioned the accident to him. Although Mr. Tackett denies that claimant mentioned the incident to him, in light of the above-quoted medical record it is reasonable to conclude that

claimant reported the incident to his supervisors as the doctor's office had directed. Consequently, at this stage of the proceeding the Board finds claimant's testimony credible that he told both Mr. Hankins and Mr. Tackett about the work-related incident.

At this stage of the proceeding the Board also concludes that Mr. Hankins had sufficient authority over claimant to be considered a supervisor over claimant for purposes of giving notice of accident as required by the Workers Compensation Act. Moreover, Mr. Tackett was also one of claimant's supervisors. Therefore, notice of the accident to either Mr. Hankins or Mr. Tackett satisfied the notice requirement of the Act.

Based on claimant's testimony and the medical evidence presented thus far, the Board concludes that claimant's present need for medical treatment is directly related to the October 7, 2002 accident. Claimant described how after the October 7, 2002 accident he had difficulty walking, how his foot swelled, how he wrapped the foot with an Ace bandage and how the foot or ankle would give out. Additionally, claimant presented a January 13, 2003 medical report from Dr. Pedro A. Murati in which the doctor diagnosed right foot pain secondary to regional sympathetic pain disorder that the doctor attributed to the October 7, 2002 incident at work.

The Board is aware that respondent's witnesses testified that they believed claimant injured his foot at home after the October 7, 2002 incident at work. Claimant did not deny experiencing at least two incidents at home. But claimant testified how his right foot and ankle were weak following the incident at work and that the incidents at home occurred when his foot or ankle gave out. In light of the record compiled to date, the Board concludes that claimant's explanation is reasonable and credible.

The March 13, 2003 preliminary hearing Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.¹

WHEREFORE, the Board affirms the March 13, 2003 Order entered by Judge Clark.

IT IS SO ORDERED.

¹ K.S.A. 44-534a.

Dated this ____ day of May 2003.

BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant
 James M. McVay, Attorney for Respondent and its Insurance Carrier
 John D. Clark, Administrative Law Judge
 Director, Division of Workers Compensation